IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID PITLOR, Plaintiff, TD AMERITRADE, INC., AND CHARLES SCHWAB AND CO., INC., Defendants.	Case No. 8:23-cv-00407 PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR A STATUS CONFERENCE OR, ALTERNATIVELY, FOR A RULING ON THE PENDING PETITION TO VACATE THE ARBITRATION AWARD.

Plaintiff David Pitlor respectfully moves this Court to set a status conference or, alternatively, to issue a ruling on the pending petition to vacate the arbitration award. In support of this motion, Plaintiff states as follows:

I. INTRODUCTION

Unique statutory claims are substantiated by evidence that was suppressed by the Defendants and then improperly stricken from the record at the arbitration. The excluded evidence is case-dispositive and concerns incidents that transpired after the account was closed (and thus are beyond the temporal scope of Schwab's arbitration agreement), including:

- **Post-closure money laundering activity:** July 2018 "sweep" entries through Plaintiff's closed Futures account served to disguise the source, recipient, control and purpose of the transactions.
- **Fraud Hotlists:** Schwab's internal memos reveal that Plaintiff was placed on fraud "hotlists", wholly incompatible with the Defendants' official stance that no fraud occurred in Plaintiff's Schwab accounts.

The petition to vacate the arbitration award has remained pending for more than two years. During this time, material insights regarding the previously suppressed evidence have

emerged. The Court's ruling in this case will materially determine the application of preclusion doctrines. Therefore, in the interest of judicial economy, a ruling should be entered before Plaintiff files an amended complaint or initiates a separate suit.

II. LEGAL STANDARD

A. Procedural Authority (Status Conference or Ruling on the Papers).

The Court has broad discretion to manage its docket, including setting status conferences and deciding pending motions on the papers. *See* Fed. R. Civ. P. 16(a) (pretrial/status conferences to secure the just, speedy, and inexpensive resolution of cases); Fed. R. Civ. P. 1 (rules "should be construed, administered, and employed" to that end); Fed. R. Civ. P. 78(b) (submission and decision on written filings without oral hearing); and the Court's inherent authority to control its docket. See *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Accordingly, the Court may either convene a brief status conference or resolve the fully submitted petition to vacate without further proceedings.

B. Vacatur of Arbitration Awards

Under the Federal Arbitration Act, a court may vacate an award when (i) the award was "procured by… undue means," 9 U.S.C. § 10(a)(1), or (ii) the arbitrators were "guilty of misconduct… in refusing to hear evidence pertinent and material to the controversy," and the refusal caused prejudice, § 10(a)(3). While arbitrators have discretion over evidentiary matters, courts vacate where a party is denied a fundamentally fair hearing - i.e., a reasonable opportunity to present material proof of their claims.

III. BACKGROUND

1. The parties expressly agreed that "[a]ny documents produced by Claimant or Respondents in this Arbitration" were allowed to be introduced as Exhibits at the arbitration hearing.[1] The Defendants even reserved the right to utilize "[a]ll documents and materials exchanged by any party after the date of [their] Exhibit List."[2] Clearly, the spirit of the agreement was to permissively allow any exhibits to be introduced into the record, without limitation, so long as they were comprised of materials that had been exchanged by the parties prior to the hearing.

2. Plaintiff trusted that the agreement would be honored, but it was disavowed and disregarded, respectively, by the Defendants and FINRA's arbitration panel. Because critical evidence was stricken from Plaintiff's case-in-chief, the arbitration was rendered fundamentally flawed and structurally unfair. The key facts that led to this injustice are summarized as follows:

   a. After the Defendants failed to respond to Plaintiff's discovery requests, Plaintiff filed a motion to compel their response on March 24, 2023. The Defendants argued that they had already fulfilled their discovery obligations. On April 13, the Chief Arbitrator denied the motion and decided, without any reasoning or explanation, that Schwab was not required to furnish anything more.

   b. The Defendants produced over 1,200 pages of documents on the day that hearing exhibits were due to be exchanged, despite having successfully resisted the

[1] Exhibit 'Q': "Respondents' (Defendants')… Exhibit List" at ¶C
Exhibit 'R': "Claimant's (Plaintiff's) Exhibit List" at ¶D

[2] Exhibit 'S': "Respondents… Exhibit List" at ¶E

motion to compel weeks earlier. This document production came months after the discovery due date and weeks after the deadline to amend claims.

c. Plaintiff discovered significant, unique evidence in the Defendants' late-produced materials. On May 22, the day before the hearing, he uploaded "Summary Exhibits" via FINRA's Dispute Resolution Portal (online case management system)—relying on the parties' written stipulation that "any documents produced by Claimant or Respondents in this Arbitration"[3] could be introduced as exhibits at the hearing.

d. At the hearing, as the first order of business before opening statements, the Defendants moved to strike Plaintiff's "Summary Exhibits" from the record that featured the new evidence. The arbitrators disregarded the parties' agreement regarding admissibility of exhibits and granted the motion to strike. The impact was severe: when the Defendants moved to dismiss at the conclusion of Plaintiff's case, these materials were unavailable to be considered because they were not part of the official record that constituted the Claimant's (Plaintiff's) official case-in-chief.

e. Plaintiff's claims were dismissed, and accordingly the Defendants were not required to present their case-in-chief.

3. The Defendants may claim that the 'evidence at issue was produced before the arbitration,' but the truth is they suppressed incriminating documents for five years and then withheld their production at arbitration until after the deadline for amending claims had passed, months after discovery materials were due to be exchanged. Then they insisted that Plaintiff's exhibits introducing the blockbuster evidence should be stricken from the record because they were submitted "late." While the arbitrators were persuaded to strike that crucial evidence from the record, in doing so they ignored the

[3] Exhibit 'Q': "Respondents… Exhibit List" at ¶C
Exhibit 'R': "Claimant's Exhibit List" at ¶D

parties' explicit agreement that any materials exchanged by the parties could be introduced as exhibits at the arbitration.

4. The Defendants' discovery abuses and other untoward behavior constitute a disavowal of the arbitration agreement itself, and any chance for Plaintiff to have his claims fairly adjudicated at the arbitration was spoiled by the arbitrators' disregard for the parties' agreement regarding the arbitration procedures.

IV. The Excluded Materials Involve Events Not Covered by Arbitration Agreement

The following issues concern events that occurred after Plaintiff's Schwab account was closed and therefore should not be subject to the arbitration agreement

A. Money Laundering Through Closed Futures Account

5. Unauthorized transactions were secretly executed in Plaintiff's "closed" Futures account on July 6, 2018 – months after its supposed closure at the end of March.

6. The "Sweep payments" reported by the July 2018 Futures Statement served to obscure the source, recipient, and purpose of the transactions. As shown by the excerpt on the next page:

- A debit for $16,345.96 is offset by three credits that total the same amount.
- The "Sweep Payment" transactions (i.e. cash transfers) were routed to and from several exchanges (CBOT, CME. COMEX, NYMEX), supposedly, but nothing else regarding the identity of the counterparties or the precise nature of these transactions can be discerned.

Introduced by: Charles Schwab & Co. Inc. MONTHLY FUTURES STATEMENT

DAVID PITLOR
5120 MAYBERRY ST APT 1104
OMAHA, NE 68106-1780

PAGE :1

JOURNAL ENTRIES AS OF 06-JUL-18

DATE	VALUE DATE	PAYMENTS TYPE	DESCRIPTION	REG	CCY	DEBIT/CREDIT
06-JUL-18	06-JUL-18	Payments	Sweep payment CBOT	01	USD	16 345.96 DR
06-JUL-18	06-JUL-18	Payments	Sweep payment CME	01	USD	14 081.98 CR
06-JUL-18	06-JUL-18	Payments	Sweep payment COMEX	01	USD	2 003.66 CR
06-JUL-18	06-JUL-18	Payments	Sweep payment NYMEX	01	USD	260.32 CR
TOTAL				**01**	**USD**	**0.00 DR**

Account Summary from 02-JUL-18 to 31-JUL-18

7. These rogue transactions provide unique, substantive proof that Plaintiff's Futures account, and indeed his identity, was involved in unauthorized cash transfers without his knowledge.

8. Plaintiff has maintained since 2018 that the Futures account was utilized as a conduit to launder funds stolen from his account:

   - Previously, this assertion relied on inferences drawn from discrepancies identified in the account balances, and comparisons of various records showing that historical data was altered to retroactively eliminate the Futures account from the accounting. While Plaintiff stands by this analysis, it is inescapably cumbersome to comprehend.
   - Now, with a single page, the July 2018 Futures Statement proves that unauthorized funds were transferred through the Futures account.

9. These facts indicate a violation of 18 U.S.C. § 1029(a)(2)[4], Fraud and related activity in connection with access devices:

[4] "Whoever knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating $1,000 or more during that period…" (has committed a violation of 18 U.S.C. § 1029(a)(2))

- Electronic sweep transfers were routed through Plaintiff's account labeled as "closed" and therefore involved the use of an unauthorized access device.[5]
- The transactions were conducted using Plaintiff's identity, without his knowledge after he was restricted from accessing the supposedly "closed" account, thereby satisfying the "intent to defraud" requirement. As such, this qualifies as an offense under § 1029(a)(2).

10. Furthermore, this plausibly constitutes money laundering in violation of 18 U.S.C. §1956(a)(1)(B)(i):

- The transactions involved proceeds of a "specified unlawful activity[6]" which, under 18 U.S.C. § 1956(c)(7)(A), incorporates racketeering activities listed in § 1961(1), including § 1029 (access device fraud).
- The transactions served to conceal or disguise the nature, source, ownership, and control of the proceeds of specified unlawful activity[6] and accordingly satisfied the concealment prong of § 1956(a)(1)(B)(i).

B. Schwab Secretly Added Plaintiff to Fraud Hotlists

11. Schwab has always maintained that no fraudulent activity occurred in Plaintiff's account, but they were certainly aware of malfeasance. They contrived a scheme to blame him, secretly. And it worked: Plaintiff was added to fraud hotlists, and he's never been approved for credit since.

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[5] 18 U.S.C. § 1029(e)(1) defines "access device" to include any account number or other means of account access that can be used to initiate a transfer of funds) and § 1029(e)(3) (defining "unauthorized access device" to include any access device that is revoked or canceled).

[6] 18 U.S.C. §1956(a)(1)(B)(i) states: "Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
(B) knowing that the transaction is designed in whole or in part—
(i) **to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity**…" (emphasis added).

12. On April 4, 2018, just days after the Futures account was supposedly "closed," internal memos show that Plaintiff was added to Schwab's "Bridger Hotlist" and "FraudFinder Hotlist". The designation is specified as "Permanent," with no expiration.

Client Central - (344709044) **For Internal Use Only**
Customer Name: , Customer ID: 344709044

Original Message by Crystal Aguilera
Created: 04/04/2018 10:34 AM ET
Expires: Permanent

CVRC -DAVID PITLOR Added to Bridger Hotlist and FraudFinder Hotlist. For questions call CVRC @ 877-239-1163

13. Another request to add Plaintiff to the Hotlists occurred on June 18, 2018—six weeks after Schwab had officially terminated their business relationship with Plaintiff.[7] Meanwhile, in May- June 2018, they also insisted in filings to this Court that Plaintiff's allegations of fraud were baseless and implausible.

Client Central - (344709044) **For Internal Use Only**
Customer Name: , Customer ID: 344709044

Original Message by Carl Richardson
Created: 06/18/2018 12:04 PM ET
Expires: Permanent

HOTLIST - Request has been entered asking CVRC to add Mr. Pitlor to Bridger Hotlist and FraudFinder Hotlist. For questions call CVRC @ 877-239-1163

Hotlisting enables "safe harbor" information sharing with other financial institutions

14. While there is no publicly available information specifically regarding the "FraudFinder" hotlist, its name seems to imply its purpose: a list that identifies fraudsters.

[7] The brokerage account was scheduled to be officially closed on May 2. Schwab cut off access to his account on April 26. There is no question the account was closed more than one month before the June 18, 2018 hotlist entries.

15. The "Bridger Hotlist" appears to reference the Bridger Insight platform, a comprehensive compliance suite designed by LexisNexis Risk Solutions to optimize compliance with Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) programs as required by the Office of Foreign Assets Control (OFAC), the Bank Secrecy Act, and the USA PATRIOT Act. Bridger Insight is advertised as a tool to "improve[] the identification of potential money-laundering and terrorist financing risks"[8] and to "document and defend decisions with transparent audit trails, robust case management and intuitive compliance reporting."[9]

16. Even though the memos are marked "For Internal Use Only," this is misleading: Adding Plaintiff to the "Fraudfinders" and "Bridger" hotlists established the basis to share "suspected illicit activity" with other financial institutions:

- The USA Patriot Act encourages information sharing for AML and CFT purposes. and provides a safe harbor for registered 314(b)[10] participants.
- The Bridger Insight platform provides the framework[11] to organize and manage data to satisfy regulatory requirements related to 314(b) sharing.
- Even though information shared via 314(b) channels are outside the scope of the Fair Credit Reporting Act (and thus does not appear on Experian, Equifax, or TransUnion credit reports), one of the allowable uses of 314(b) information is "determining whether to maintain an account, or to engage in a transaction."[12]

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[8] https://risk.lexisnexis.com/products/bridger-insight-xg#bridger

[9] https://risk.lexisnexis.com/insights-resources/case-study/banorte-financial-crime-compliance

[10] Section 314(b) of the USA PATRIOT Act provides a safe harbor from liability for voluntary information sharing. Banks and broker-dealers may share customer and transaction information with each other if they have a reasonable basis to suspect involvement in money laundering or terrorist financing. (*See* 31 CFR § 1010.540 - Voluntary information sharing among financial institutions.)

[11] LexisNexis markets Bridger Insight® XG as a compliance screening platform with audit trails, case management, and reporting to "maintain regulator-ready compliance" to justify why information was shared, who approved it, and what was used—all aligned with the confidentiality and safeguards expectations that must be met for information sharing under 31 CFR 1010.540(b)(4)(ii).

[12] 31 CFR § 1010.540 b(4)B - Use and security of information

17. The timing and repetition of Schwab's hotlist actions support a reasonable inference that Schwab intended the designation to travel beyond internal use, so to shift blame onto Plaintiff—secretly—to insulate the Defendants from culpability for their own systematic failures. While they outwardly declared in public court filings that no fraud occurred and that the errors Plaintiff identified were in fact his delusional misinterpretations, and they have maintained that position ever since, it is clearly incompatible with their actions.

18. The consequences for Plaintiff continue to be devastating. Plaintiff's credibility and reputation have been irreparably destroyed. And, since the "Hotlisting" occurred, Plaintiff has been completely unable to qualify for loans or credit of any sort:

- Plaintiff was last approved for credit in April 2018. Since then, he has been uniformly rejected for home loans, credit cards, and even in-store credit accounts (e.g. Kohls, Best Buy, Scheels).
- Plaintiff's credit reports show a nearly 20-year history with frequent activity and fully paid-off accounts. Put simply, there are no red flags that justify his being permanently disqualified from attaining credit.
- Since it's been so long since he's been approved, his credit score is now "–" (with the label "unscorable.")
- Business opportunities and employment prospects have and continue to be spoiled as a result.

19. Section 314(b) provides a safe harbor for good-faith information sharing for AML/CFT purposes, but it does not immunize underlying misconduct. Schwab added Plaintiff to hotlists (a separate act than the actual "sharing" of information) while representing in court—virtually simultaneously—that no fraud occurred at all. Altogether, the facts and circumstances substantiate a violation of wire-fraud under 18 U.S.C. § 1343 that has irreparably defamed Plaintiff.

V. FINRA Disciplinary Action Affirms Plaintiff's Interpretation of Flawed Recordkeeping

A. Inaccurate Recordkeeping Indicates Unreported Transactions

20. In June 2023, after the arbitration had concluded, FINRA published a disciplinary action against Barclays Capital that involved the same type of recordkeeping inconsistency that Plaintiff identified in his Schwab brokerage statements.

> "Coding errors caused positions that were either booked or re-booked after the trade date to be reported with a trade date that was later than the actual trade date. As a result, positions were not reported during the time between the actual trade date and the later, incorrectly reported trade date."

FINRA Letter of Acceptance, Waiver, and Consent No. 2019061076001 (Barclays Capital Inc.)—page 2.
(**Exhibit P** submitted with Filing No. 21 and attached herewith)

21. The same recordkeeping flaws appear in the Schwab brokerage statements for Plaintiff's account. Previously, Plaintiff arrived at the same conclusion—namely that the discrepancy indicated that transactions were missing from the account history:

a. The *Trade Dates* reported in the ***Transaction Detail*** for the *Short Sale* and *Cover Short* transactions are March 21 and March 22, respectively. The gain/loss accounting reports different dates (presented on the following page).

March Statement - p.19 (Short Sales opened the position on 3/21/2018)

Transaction Detail - Purchases & Sales (continued)

Options Activity (continued)

Settle Date	Trade Date	Transaction	Description	Quantity	Unit Price	Total Amount
03/22/18	03/21/18	Short Sale	CALL SPDR GOLD TR $128 EXP 03/29/18: GLD 03/29/2018 128.00 C	(1.0000)	0.2400	18.40
03/22/18	03/21/18	Short Sale	CALL SPDR GOLD TR $128 EXP 03/29/18: GLD 03/29/2018 128.00 C	(49.0000)	0.2300	1,089.40

March Statement p.21 (Cover Short closed the position on 03/22/2018)

Transaction Detail - Purchases & Sales (continued)

Options Activity (continued)

Settle Date	Trade Date	Transaction	Description	Quantity	Unit Price	Total Amount
03/23/18	03/22/18	Cover Short	CALL SPDR GOLD TR $128 EXP 03/29/18: GLD 03/29/2018 128.00 C	50.0000	0.1800	(938.24)

b. The "Realized Gain or (Loss)" section of the March Statement reports the position as a day trade occurring on March 23. The inaccurate dates are also reported by the 1099-B Tax Statement. Aside from the discrepancy regarding the transaction dates, all other data align including *Cost Basis* and *Proceeds.*

March Statement - p.12 (position Opened and Closed on 03/23/2018)

Realized Gain or (Loss) (continued)

Short Term (continued)	Quantity/Par	Acquired/ Opened	Sold/ Closed	Total Proceeds	Cost Basis	Realized Gain or (Loss)
CALL SPDR GOLD TR $128 EXP 03/29/18: GLD 03/29/2018 128.00 C	50.0000 S	03/23/18	03/23/18	1,107.80	938.24	169.92

1099-B Tax Statement - p.18 (position Opened and Closed on 03/23/2018)

Taxpayer ID Number: ***-**-2812 Date Prepared: February 8, 2019

Proceeds from Broker Transactions — 2018 (continued) **Form 1099-B**

Department of the Treasury-Internal Revenue Service Copy B for Recipient (OMB No. 1545-0715)

SHORT-TERM TRANSACTIONS FOR WHICH BASIS IS REPORTED TO THE IRS - Report on Form 8949, Part I, with **Box A** checked.

1a-Description of property (Example 100 sh. XYZ Co.) CUSIP Number / Symbol	**	1b-Date acquired 1c-Date sold or disposed	1d-Proceeds 6-Reported to IRS: Gross Proceeds (except where indicated)	1e-Cost or other basis	1f-Accrued Market Discount 1g-Wash Sale Loss Disallowed	*Realized Gain or (Loss)*	4-Federal Income tax withheld
1S CALL SPDR GOLD TR $128 EXP GLD 03/29/2018 128.00 C	BC	03/23/18 03/23/18	$ 18.40	$ 18.76	-- $ 0.36	$ 0.00	0.00
49S CALL SPDR GOLD TR $128 EX GLD 03/29/2018 128.00 C	BC	03/23/18 03/23/18	$ 1,089.40	$ 919.48	-- --	$ 169.92	0.00

22. The documentation of ***every*** Short Sale is flawed in the same manner: the positions were "reported with a trade date that was later than the actual trade date" – precisely matching the description in the Barclays disciplinary action. Previously, Plaintiff deduced that this type of inconsistent/inaccurate reporting can be exploited to conceal the fact that other transactions and positions were omitted from the records: Two positions

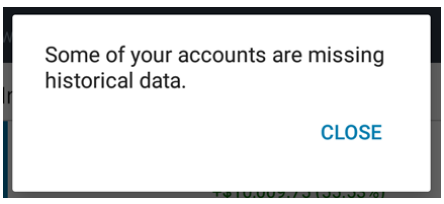
were opened and closed for the same asset (i.e., stock symbol) during the March 21-23 timeframe, but only one position was reported.

GLD 128 Options Contracts with Expiration Date 3/29/2018		
Transaction Detail - Purchases and Sales (March Brokerage Statement)		
March 21	March 22	March 23
-50 contracts (Short Sale) Proceeds: $1,107.80	+50 contracts (Cover Short) Cost Basis: ($938.24)	[No transactions reported]
Realized Gain (or Loss) Accounting (March Brokerage Statement)		
March 21	March 22	March 23
[No transaction reported]	[No transaction reported]	Short Sale - 50 Contracts Proceeds: $1,107.80 & Cover Short +50 Contracts Cost Basis: ($938.24)

REPORTING DISCREPANCY SERVES TO CONCEAL UNREPORTED TRANSACTIONS ***Two Positions Occurred, Only one was documented by the Official Records***		
March 21	March 22	March 23
-50 contracts (Short Sale) Proceeds: $1,107.80	+50 contracts (Cover Short) Cost Basis: ($938.24)	**Short Sale - ? Contracts** **Proceeds: ?** **&** **Cover Short + ? Contracts** **Cost Basis: ?**

23. The 2023 disciplinary action against Barclays provides authoritative affirmation for Plaintiff's claim that those bookkeeping "errors" facilitated the concealment of transactions that had been omitted from the official records. This is further supported by the discrepancies between the live balances (captured by screenshots) and the historical account data, and moreover indicated by the notification that frequently appeared upon signing into the Schwab Mobile App:

"Some of your accounts are missing historical data."[13]



[13] The Schwab app displayed this message frequently upon login, captured by screenshots on March 18, 19, 23, 26, 27, and 28. *See also* Exhibit 'S' at ¶R

B. Coding errors evidence a sophisticated exploit chain—and the Schwab/TD conspiracy

24. As stated in the FINRA disciplinary action, "coding errors" were blamed for Barclays issues.[14] Indeed, "coding errors" also coincided with Schwab's erroneous accounting in 2018. Far beyond mere "coding errors," a sophisticated exploit chain is evinced that, furthermore, exposes TD Ameritrade direct role in facilitating the device tampering and, ultimately, the interference with the Schwab account. **Exhibit 'S' is respectfully submitted herewith to demonstrate that evidence does exist supportive of these claims regarding "coding errors," and particularly regarding TD Ameritrade's involvement.**

25. Furthermore, Plaintiff respectfully notifies the Court that, in the course of seeking independent technical expertise to interpret the crash logs, he encountered an individual who was employed by the Defendants in 2018. This individual likely possesses direct, material knowledge concerning the operation and integrity of the systems at issue, and specifically regarding the so-called "coding errors." Plaintiff is prepared to issue a subpoena to compel testimony.

VI. Critical Evidence Remains Withheld by the Defendants

A. Balance, Position, and Transaction Records ("BP&T") are Incomplete

24. Schwab's final discovery production included Balance, Position, and Transaction reports. The BP&T reports list a multitude of account balances, buying power, and other

[14] Barclays self-reported their mistakes and was ultimately fined $2.5 Million. Schwab added Plaintiff to fraud "Hotlists."

values for each day. But the records are incomplete: no records were produced for April 2018, and thus the data for the final two weeks of account activity are missing.

25. Because the Defendants refused to produce the data for April 2018, an inference is arguably justified that the missing records contain evidence of fraud, errors, or mistakes that substantially support Plaintiff's claims.

B. Transaction "Sentry Logs" are provided for only three days

26. The "Sentry Logs" provide key details regarding the entry and processing of the trade orders. These records could have verified that the account's order activity aligns with the transaction data shown in the brokerage statements, but only three days' worth of data for account activity spanning over six weeks.

27. Schwab is either unable or unwilling to furnish data that would corroborate the authenticity of the transaction activity, and thus a negative inference is warranted: data were intentionally destroyed or withheld to conceal evidence of fraud, errors, or mistakes.

Date	Time	User	Account	IP	Platform	Details
03/27/2018	15:05:53.941	DPNE2018	* 5612	68.13.177.119	Mobile App	**Client pressed 'Review Order'.** Requesting a new order to Buy 150 shares of C at a $n/a Limit, Day Only, with a n/a share Minimum Quantity. Dividends will not be reinvested.
03/27/2018	15:05:54.457	DPNE2018	5612	68.13.177.119	Mobile App	Requesting new order, no order number created for symbol GLD 03/29/18 $128.00 Calls. Order Edits AC147 - This "Buy to Open" order cannot be accepted because the account currently has %1% %SYMBOL% contracts short. Please close out the existing short position before opening a long position. (AC147) AC142 - This account is currently short %1% contracts of this option. (AC142)
03/27/2018	15:06:18.095	DPNE2018	5612	68.13.177.119	Mobile App	**Client pressed 'Review Order'.** Requesting a new order to Buy 100 shares of C at a $n/a Limit, Day Only, with a n/a share Minimum Quantity. Dividends will not be reinvested.

28. Even the data provided contain irregularities: The "Details" column shows unsubstituted template variables (e.g. "the account currently has %1% %SYMBOL% contracts short" rather than listing the actual quantity and symbol name). Perhaps this is

just a glitch from exporting the data, and perhaps it was not, but regardless of the cause, this impairs the audit trail for even the three days that were furnished.

29. The incompleteness of these records is particularly relevant to consider alongside the recordkeeping inaccuracies indicative of transactions missing from the record, as well as the "coding errors." *Please see Exhibit 'S'.*

VII. CONCLUSION

30. The instant Action has been pending for over two years without any ruling. Overall, this dispute has languished for nearly a decade. Plaintiff genuinely desires to move on, but he cannot because of the devastating consequences that continue to encroach on nearly every aspect of his life: his credibility and reputation have been ruined, iniquitously.

31. In 2018, the Defendants secretly reported Plaintiff to fraud "Hotlists." Since then, the Defendants have obtained favorable rulings from this Court, and in arbitration, based on their fervent insistence that no fraud occurred in Plaintiff's account. They have repeatedly insisted that Plaintiff's claims are nothing more than baseless accusations premised upon his delusional misinterpretations of the account data. This Court was persuaded and—at the Defendants' request—even sanctioned Plaintiff in 2020, for filing "frivolous lawsuits."[15]

[15] *Pitlor v. TD Ameritrade, Inc.*, No. 8:23-cv-00267 (D. Neb. 2020) (ECF No. 37, Page ID #1905): "Not to mention that Pitlor himself apparently needs help to stop wasting money on filing fees for frivolous lawsuits. And enough of this Court's attention has been spent dealing with him." (*See* Exhibit L – Filing 2-4 at 97).

32. The Defendants are responsible for the unjust, irreparable destruction of Plaintiff's credibility and reputation. Plaintiff respectfully requests that the Court take notice of this particularly inequitable outcome and, without further delay, grant relief.

33. For the foregoing reasons, Plaintiff respectfully requests that the Court either:

(a) set a hearing or status conference to discuss the pending petition and next procedural steps; or

(b) alternatively, issue a ruling on the pending motion to vacate the arbitration award, and,

(c) grant such other and further relief as justice requires.

Respectfully submitted this 6th day of November, 2025.

David Pitlor
Plaintiff,

By: /s/David Pitlor

David Pitlor, P.E.
Licensed Professional Mechanical Engineer
Nebraska Certificate No. E-17959

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2025, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which sent notice to all counsel of record including to:

Victoria H. Buter
KUTAK ROCK LLP
1650 Farnam St. Omaha, NE 68102
vicki.buter@kutakrock.com
Counsel for the Defendants

/s/David Pitlor
David Pitlor